

A thematic content analysis of psychologists' reports in child custody evaluations



R. Brandt*

Department of Psychology, University of Cape Town, South Africa
Child Youth and Family Development Research Programme, HSCR, Private Bag
X9182, Cape Town, 8000, South Africa
e-mail: rbrandt@hsr.ac.za

A. Dawes

Child Youth and Family Development Research Programme, HSCR, and Department of Psychology, University of Cape Town, South Africa

A. Africa

Department of Psychology, University of Cape Town, South Africa

L. Swartz

Child Youth and Family Development Research Programme, HSCR and Department of Psychology, University of Stellenbosch, South Africa

The key objective of this study was to examine empirically the substantive issues that inform psychologists' decision-making in custody evaluations. The study draws on a relatively small convenience sample of 39 reports from eight different psychologists who represented key informants in the field in Cape Town. Jameson, Ehrenberg and Hunter's (1997) Best Interests of the Child Assessment model was revised and used as a template for a thematic content analysis. The results of the study indicate that psychologists tend to adopt a child-centred approach, with the child's basic and developmentally related needs ranked as the most commonly employed criterion (reflected in 95% of reports). The child's rights and wishes were reflected in 54% of the reports, and socio-economic resources were the lowest-ranked criterion, reflected in only 18% of the reports. The results of the study are discussed in terms of the need to formulate the implications of a child rights orientation, to negotiate referral questions and to adapt report writing styles to the legal-judicial context. Further, the implications of the findings for future research and professional practice are discussed and recommendations made.

* To whom correspondence should be addressed

Internationally, and particularly within the South African context, there is a dearth of research on the issues that inform psychologists' custody evaluations. Despite a considerable body of literature variously addressing the best interests of the child in custody practices, the narrower question regarding the substantive issues that inform psychologists' decision-making remains infrequently subjected to empirical consideration. Research into those issues is therefore needed and can serve to highlight difficulties, clarify practice and inform suggestions for improvement.

The range of psychological literature over the last four decades has alternately focused on the role of early experience on the child's development (e.g. Ainsworth, 1973; Bowlby, 1952; Hodges & Tizard, 1989), the post-divorce adjustment of the child (e.g. Hetherington, Bridges & Insabella, 1998; Roseby & Johnston, 1998; Wallerstein & Kelly, 1980) and specific criteria considered in custody recommendations (e.g. Ackerman & Ackerman, 1997; Jameson, Ehrenberg & Hunter, 1997; Keilin & Bloom, 1986). While the focus of this article will fall on the last-mentioned body of literature, two issues emanating from the former two areas of research are of particular relevance in matters related to the child's best interests and will therefore be discussed briefly.

Firstly, the child's need for continuity and at least one stable attachment figure who will provide 'mothering', particularly during critical early periods of development, has been well established (Ainsworth, 1973; Bowlby, 1952). To promote healthy gains in physical, intellectual, emotional and social development, children require a 'psychological parent' – a consistently available adult who provides for the child's need for bodily comfort and companionship, and with whom there is a reciprocity of feelings (Goldstein, Freud & Solnit, 1973). Secondly, Wallerstein and others have demonstrated convincingly that ongoing, high degrees of conflict between parents or caregivers serve as one of the most significant threats to children's post-divorce adjustment (Hetherington, Bridges & Insabella, 1998; Sorensen & Goldman, 1990; Wallerstein & Kelly, 1980). Accordingly, the psychological literature attests to the importance of continuity, the child's affective ties with his or her caregiver, and the degree of conflict between parents or caregivers in all matters concerned with promoting children's best interests, including custody evaluations.

Turning more closely to the literature concerning the specific criteria employed by psychologists, a founding piece of research in this regard is Keilin and Bloom's (1986) survey of criteria employed by psychologists, psychiatrists and Master's-level practitioners in conducting custody evaluations. Keilin and Bloom (1986) found that the criterion, the 'wishes of the older child (15 years or above)' was rated as most important, both in recommending a single custodial parent and in deciding between joint and single-parent custody. Further, one parent's attempts to alienate the child from the other parent, the quality of the emotional bond between a parent and child, the parents' psychological stability, and their respective parenting skills were considered significant factors in selecting a custodial parent. With regard to custodial

placements, the quality of the child–parent relationship, the parents' psychological stability, the parents' ability to separate their interpersonal difficulties from their parenting decisions, and the amount of bitterness and anger between them were also rated as influential in the decision-making process.

Ackerman and Ackerman's (1997) replication of Keilin and Bloom's study focused on the practices of doctoral-level psychologists, and included additional criteria so as to reflect the changes in professional practice since the original study was conducted ten years previously. With regard to the age at which the child is considered able to state his or her preference, Ackerman and Ackerman's (1997) findings concurred with those of the earlier study. However, they found a decreased reliance on the expressed wishes of the older child. In addition, evaluators were much less likely to make recommendations on the basis of a single issue. Evaluators showed an increased preference for joint custody, and employed criteria such as the parent's substance abuse and psychological stability, and the child's attachment to each parent in determining joint custody.

With regard to the specific issues that clinicians must consider, Stahl (1994) lists several questions which he considers fundamental to custody evaluations aimed at determining the best interests of the child. According to Stahl (1994), the clinician needs to consider the bond between the child and parents, the nature of the co-parental relationship, the level of parental dysfunction and capacity, and the importance of devising a parental plan. With regard to the parent–child bond, an evaluation of the child's emotional attachments is argued to be imperative since it is essential that the child maintains healthy relationships with both parents. Further, since the parents will be faced with the task of co-operating in the post-divorce rearing of the child, it is similarly important to evaluate the nature of the co-parenting relationship. Also at issue are the safety needs of the child and therefore an understanding of the psychological functioning of the parent is necessary to determine the risk posed to the child by a parent's dysfunctional or abusive behaviour. Finally, Stahl (1994) highlights the role of recommendations regarding custody and access. He suggests that a parenting plan that is detailed and specific, yet flexible, will minimise the likelihood of conflict between parents sharing the post-divorce rearing of the child, and ultimately prove most beneficial. Stahl's guidelines are therefore framed in terms of the specific needs of the child as well as the parents' capacity to provide for these needs.

The work of Jameson, Ehrenberg and Hunter (1997) serves as an additional example of research into the specific criteria employed in custody evaluations and provides a framework for the present study. Its importance stems from the fact that the research serves both to evaluate professional practice (the Best Interests of the Child Questionnaire) and to provide an assessment model (the Best Interests of the Child Assessment) for guiding custody determinations. The scheme used by Jameson, Ehrenberg and Hunter (1997) was adapted for this study (see Methodology) and it is pertinent to note at this point that the most important areas of assessment were the

child's needs, followed by the parent-child relationship, the parent-parent relationship, and the abilities of the parents. The core areas incorporated in Jameson et al.'s (1997) scheme therefore concur broadly with the type of criteria included by Kelin and Bloom (1986), Ackerman and Ackerman (1997), and Stahl (1994) in their respective contexts. Moreover, Jameson et al.'s (1997) findings provide empirical support for the importance of the nature of the child's attachment and the quality of the parent-parent relationship raised in the research by Bowlby, Wallerstein and others (Bowlby, 1952; Wallerstein & Kelly, 1980).

In contrast to the international context detailed, there has been a paucity of research in South Africa on the criteria employed by psychologists in conducting custody evaluations. The work of Cumes and Lambiase (1987) represents one of the first attempts at examining the criteria relevant to evaluating children's best interests in custody matters. Drawing on a sample of legal and mental health professionals, the study found that the most notable difference between the two groups related to the consideration of the child's wishes. While judges were disinclined to interview children, psychologists argued it to be in children's best interests to have a forum to express their views. In a follow-up study, Lambiase and Cumes (1987) similarly found differences in the weight accorded the criteria by these professionals. While mental health professionals were more cognisant of the child's needs and feelings, legal professionals took parental needs and capacities into account, suggesting that the differences may be related to the work contexts of these professionals.

Proposing to develop a South African model for the determination of custody and access in divorce, Mudie (1987) argues that the ultimate goal in these matters is to ensure the post-divorce adjustment of the child. Her review of several South African cases revealed that frequent contact with the non-custodial parent, continuity of relationships, and the pre-divorce environment are important indicators of the child's post-divorce adjustment. In addition, parental co-operation, competent parenting by the custodial parent, and stable socio-economic status were held to mitigate against poor adjustment and therefore, to constitute important criteria in the decision-making process.

In a more recent addition to South Africa's psychological literature, Bezuidenhout (2000) identified criteria for the evaluation of parents in custody evaluations. The study drew on a sample of social workers, psychologists and legal practitioners, one third of whom had no experience conducting custody evaluations. Bezuidenhout concluded that the parents' demographic characteristics and environmental factors such as distance from the child's school were the least important factors, while the parents' childrearing practices and emotional functioning were judged the most important. The last-mentioned categories include criteria such as the parents' involvement with the child, the parents' sense of responsibility, the emotional care of the child, insight into the child's emotional needs and the parents' psychological stability. In addition, it was noted that the importance of several factors depends on the child's age, sex and developmental level.

Beyond the limited empirical literature on the substantive issues that inform psychologists' custody evaluations, other research has been conducted in South Africa into psychologists' psycholegal work.¹ Within the custody field specifically, numerous unpublished postgraduate studies have looked at the post-divorce experiences of mothers and fathers (see Arenstein, 1990; Naidoo, 1995), intervention programmes for children of divorced families (see Lloyd-Young, 1997), and other clinical issues. Further, at a broader level, studies have examined the role of the clinical psychologist in divorce proceedings (see Burger, 1990; Landman, 1983) and the legal-judicial context in which psychologists' decision-making is situated (see Durrbaum, 2002). Finally, research has focused on the state of forensic psychology more generally. Most prominent in this regard is Allan and Louw's work in which they have examined psychologists' and lawyers' perceptions of psychologists' forensic work (Allan, 1995; Allan & Louw, 2001) and compiled a profile of forensic psychologists in South Africa (Louw & Allan, 1998). Further, Allan has recommended, and provided for, psycho-legal training material in order to address the professional gaps in South Africa (Allan, 1990; Allan, 1997; Louw & Allan, 1996).

However, while important research has been conducted, the extensive range of international literature regarding the best interests of the child, which has developed over the last two decades remains in marked contrast to the paucity of research in South Africa into the child custody practices of mental health professionals. Further, as Durrbaum (2002) demonstrates, child custody practice does not occur in a vacuum and is tied to the legal and judicial framework within which these matters are decided. It is thus significant to note that while officers of the court and mental health professionals are involved in making decisions regarding custody in South Africa, only the latter have any training in psychology. Even those with training in psychology have very little in-depth knowledge of child psychology and the issues of specific relevance to custody evaluations and forensic work more broadly (Louw & Allan, 1998). Nonetheless, they are routinely involved in making decisions based on assumptions about what may be in the best interests of the child's psychological development. It is this gap regarding the empirical basis for psychologists' decisions regarding the child's best interests that the current study wishes to address.

This study forms part of a larger multidisciplinary project focusing on the assumptions regarding the best interests of the child implicit in both the substantive and procedural aspects of South African law. The main aim of the present component of this larger study was to describe the criteria that psychologists, hired by litigants, take into account when making custody recommendations to the court. In particular, the study focused on the assumptions and criteria underlying these recommendations, so as to establish the 'truths' upon which clinicians rely in making their arguments.

METHODOLOGY

Data collection

Owing to the limited number of experienced psychologists in Cape Town conducting custody evaluations, as well as procedural difficulties in obtaining reports, this study draws on a relatively small convenience sample. Accordingly, the study serves as a reference point from which general trends and illustrative points may be raised.

The sample of psychologists' reports was obtained via the archives of the Centre for Socio-Legal Research at the University of Cape Town, and by contacting psychologists directly. Thirty-nine reports, collected from eight psychologists, were ultimately included in the final sample. Since the study focused only on the criteria employed in the reports, authorship will no longer be referred to.

A list of thirteen psychologists in the wider Cape Town area from whom reports could be solicited was compiled. This was done by drawing names from a Mental Health Resource Book in which practitioners in Cape Town listed their areas of interest or speciality, and by supplementing this list based on the second and fourth authors' knowledge of persons involved in the child custody field. Only reports compiled after 1994 were included. This date was employed for practical reasons as well as to accommodate several legislative and procedural shifts with a bearing on custody matters, both in Cape Town and South Africa. Most importantly, South Africa's ratification of the United Nations Convention on the Rights of the Child in 1995 necessitated the foregrounding of the best interests principle in all aspects of government with implications for children. All psychologists supplying reports were required to have at least ten years' experience, since the study was aimed at eliciting reports from key informants in the field rather than from persons doing occasional work. While no comprehensive register exists at present, it is likely that this group constituted the population of psychologists in Cape Town at the time of the study (1999) with experience in conducting custody evaluations.²

The thirteen psychologists identified by the researchers were contacted directly and asked to participate in a project to explore psychologists' custody practices. Six of the thirteen psychologists either could not be reached or declined to participate, since they were no longer involved in custody work. Thus reports were obtained directly from seven psychologists. Each of the seven psychologists was asked to provide five custody reports they regarded as representative examples of the type of reports they had produced. Some psychologists elected to provide additional reports, some did not have five reports which met the research criteria, and one report had to be discarded since it was a letter drafted during a custody evaluation and was not judged to be appropriate for the study. Finally, five additional reports were drawn from the archives of the University of Cape Town's Centre for Socio-Legal Research where the larger multidisciplinary project was based. The reports were written by two of the above-mentioned seven psychologists as well as one additional person who

could not be contacted directly. The reports were included despite predating 1994 since they formed part of a highly disputed case in which the issues informing child custody decisions were particularly salient.

Source material

The reports sampled differ in content and purpose, reflecting the range of types of activities in which legal and mental health professionals are involved during the course of conducting custody evaluations. The reports include interim orders, custody orders made at the time of the divorce, and applications for variations or reversals in custody or access made during or after the divorce order. Further, the content of the reports vary according to the referral questions, which range from the possible emigration of a custodial parent, to allegations of sexual molestation, and a parent's suicidal and homicidal threats. In addition, there was variability in the language of the reports, with a few written in Afrikaans. All the remaining reports were in English. (All the quoted passages that have been translated from Afrikaans are marked 'Tr'.)

Data analysis

The psychologists' reports were each analysed using thematic content analysis in order to explore the criteria or themes that substantially informed the decision-making within each report. Thematic content analysis (Holsti, 1969; Rist, 1994) involves the examination of a text for the presence of themes. A single text may contain a number of themes and a particular passage may reflect more than one theme. Our approach to content analysis goes beyond the enumeration of categories to considering the theoretical relevance of themes identified (see Holsti, 1969). The approach adopted is thus a holistic one that acknowledges the qualitative judgements implicit within the process of content analysis and that attempts to position psychologists' use of custody criteria in relation to their argument as a whole (within the report). Moreover, the analysis will comment briefly on the still broader context of legal and judicial practice within which individual psychologists' reports are located.

The thematic scheme

The scheme used for the thematic content analysis was adapted from Jameson et al.'s (1997) Best Interests of the Child Assessment model. To begin with, Jameson et al.'s (1997) second-order categories were used as themes and the explanation of each category as operational definitions. Several of the criteria defining each of Jameson et al.'s (1997) second-order categories were then shifted to other categories in order to improve the conceptual clarity of the model. This was necessary since Jameson et al.'s (1997) original model was derived from a factor analysis and was not designed for use as an assessment tool.

Secondly, the model was subjected to a critique based on other existing models, a review of the literature, and a close analysis of a sub-group of the reports sampled.

Comparison with Stahl's (1994) model revealed no significant differences that necessitated the revision of Jameson et al.'s (1997) model. However, several more substantial revisions were made on the basis of a review of the psychological literature. These included a revision of the names of some of the categories or themes and the creation of a separate category for socio-economic resources in order to assess caregivers' capacities and to distinguish structural elements from more functional criteria. Further, a separate category for children's rights and wishes was included to facilitate the analysis of the use of a rights-orientated discourse of the increased importance in work related to children. While not necessarily intended as such, psychologists' practice of eliciting the wishes and preferences of children is consistent with a rights-based approach that advocates children's right to participate in decisions that affect their lives. Accordingly, it was judged appropriate to separate the criteria of children's preferences into a category for rights.

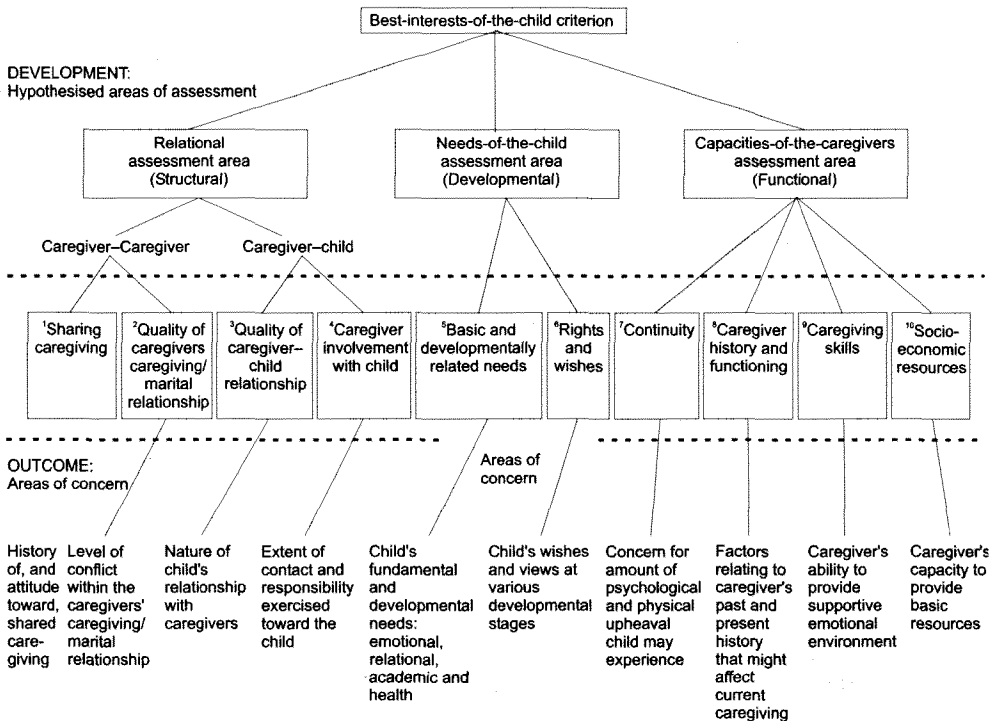
Finally, a sample of five reports was subjected to close analysis in order to evaluate whether they contained any substantial criteria not already reflected within the model. Consequently, an additional criterion was added to the (newly named) theme, *Continuity*, and the original criterion of *parental religious orientation* was broadened to include *caregivers'* cultural and linguistic orientation. This change was made in order to reflect the diverse socio-cultural contexts in which children in South Africa are raised, and which should be considered within custody evaluations. Similarly, the term, *parent* used in the original model was changed to *caregiver* in order to reflect the range of persons relevant to custody evaluations who take on caregiving roles. The term, *caregiver*, therefore, includes biological parents, foster parents, adoptive parents, stepparents, a parent's new partner, or any other alternative caregiver that plays a significant role in caring for the child concerned.

The final revised thematic model is presented in Figure 1. The model consists of several sub-categories or areas of concern that make up three hypothesised areas of assessment. These areas of assessment are: structural (relationships within the caregiving unit), developmental (the needs of the child) and functional (the capacities of the caregivers). Furthermore, the relational assessment is divided into a consideration of the relationship between caregivers and between caregiver and child.

The explanation of each of the ten sub-categories in the model serves as the operational definitions for the ten themes used in the present analysis. The themes and operational definitions are presented in Table 1.

Reliability

Before formal data analysis began, the first and second authors conducted a blind rating of four reports in order to establish inter-rater reliability in employing the coding scheme. Over and above the initial concordance rate that was found to be within acceptable statistical limits (80%), subsequent discussion resulted in consensus regarding the remaining themes. Additional discussion was also engaged in throughout



Source: Adapted from 'The Best-interests-of-the-child assessment model: Development and outcome' (Jameson, Ehrenberg & Hunter, 1997, p. 26)

Figure 1. The thematic scheme

the research process in order to clarify the use of the thematic scheme, and thus the reliability and potential validity of the study's findings.

RESULTS OF THE THEMATIC CONTENT ANALYSIS

Child's basic and development-related needs

An analysis of the psychologists' reports (see Table 1) revealed that the most commonly employed criterion was the child's basic and development-related needs. This theme, which was reflected in 37 (95%) reports, incorporates a range of the child's fundamental and developmental needs, including emotional, relational, academic and health needs. Two of the criteria listed reflect principles frequently referred to within the literature, namely, the tender years and same-sex principles. Respectively, these are the young child's need to be kept with the mother (particularly when under the age of seven years) and the child's need to be with the same sex parent (most often applied to adolescents). Two passages are provided as examples of the child's needs (see Table 1).

Table 1. Definitions, case material and results

Theme	Operational definition	Criteria	Example (case material taken from reports)	Results of Thematic Content Analysis		
				No. Reports (n=39)	% reports (n=39)	Overall rank order
1. Sharing caregiving	Caregivers' history of and attitude toward shared parenting	<ul style="list-style-type: none"> Caregiver's willingness to share caregiving after separation Caregiver's willingness to allow child contact with other caregiver Caregiver's history of shared caregiving Caregiver's preferences for shared caregiving plans Caregiver's ability to cooperate on caregiving matters Extent to which new partners contribute to caregiving 	Ms X was also asked about her position regarding joint custody. She was strongly against it . . . [and] also believed that joint custody would only work if she let Mr X control it completely. She felt she would end up in the same position as his first wife who has had very little say in the life of her daughter, according to Ms X. In my assessment the concerns Ms X expressed about joint custody are realistic.	15	39	8
2. Quality of caregivers' caregiving/ marital relationship	The level of conflict within the caregivers' caregiving or marital relationship	<ul style="list-style-type: none"> Level of conflict between caregivers Physical violence in caregivers' relationship 	<p>There is a bad relationship between Mr and Ms X. Ms X is not prepared to be in the same room as Mr X and will talk to him over the telephone only about arrangements for the children . . . [Their] bad relationship . . . is repeated in the behaviour of the children who align themselves with the same-sex parent and interact in a destructive manner with each other.</p> <p>. . . following a serious dispute involving physical violence, Ms X left her husband and took their child with her . . . As a result of this event, Ms X has laid a charge of assault against Mr X.^{Tr}</p>	11	31	9
3. Quality of caregiver-child relationship	The nature of the child's relationship with his or her caregiver	<ul style="list-style-type: none"> Caregiver's affection for the child Overall quality of each caregiver's relationship with the child Child's affection for each caregiver Physical abuse of the child by a caregiver Sexual abuse of the child by a caregiver 	Indications are that the relationship between [the child] and his mother are not good at all. According to all reports, it is characterised by conflict and mutual aggression. [The child] feels rejected by his mother while in his perception [his sister] has been favoured by her.	33	85	2
4. Caregiver involvement	The extent of contact and responsibility caregivers exercise toward the child	<ul style="list-style-type: none"> Extent of caregiver-child contact before divorce process Extent of caregiver-child contact during divorce process Caregiver's exercising of responsibility for the child 	When the children were still very young he [the father] participated in the bottle feeding, often changed their nappies and bathed them . . . More recently, during the time that the couple were still together, Mr X said that he continued in this role, sharing the activity of dressing the children, preparing meals, bathing them and fetching the children from his mother in the late	24	62	5

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				No. Reports (n=39)	% reports (n=39)	Overall rank order
			afternoons . . . // I have no doubt that [Mr X's portrayal of himself as a non-traditional father] is a true reflection of his actual role as a committed and involved father.			
5. Basic and developmentally related needs	The child's fundamental and developmental needs: emotional, relational, academic and health	<ul style="list-style-type: none"> • Child's academic needs • Child's intellectual needs • Child's daily routine • Child's desire to see extended family • Child's special health needs • Child's desire to see his or her friends • Child's emotional needs • Child's interests and preferred activities • Child's need for relationships with siblings • Child's need to be with 'psychological parent' • Child's perception of his or her relationships with other family members • Child's fears about current family situation • Keeping young child and mother together (tender years' principle) • Keeping same-sex caregiver and child together (same sex principle) 	<p>She [the daughter] is of an age when her peer group is very important to her, more specifically being accepted by her peer group. Having not only to change schools, but also settle in a new city with none of her old friends nearby, is very likely to present her with severe problems gaining acceptance and fitting in.</p> <p>He [the son, Y] had frequent headaches and abdominal pains which Mr X put down to tension. He also found Y had become withdrawn whereas he used to be quite extrovert [sic] . . . He was very restless at night, he talked in his sleep and he was afraid of the dark . . . A further concern was that Y had performed below the class average and failed two subjects at the end of the last term.</p>	37	95	1
6. Child's rights and wishes	The child's wishes and views at various developmental stages	<ul style="list-style-type: none"> • Child's views and preferences when 6 to 11 years old (middle school) • Child's views and preferences when 12 to 14 years old (early adolescence) • Child's views and preferences when 0 to 5 years old (toddler and preschool) • Child's views and preferences when 15 years or older (late adolescence) 	During the interview [the child] was quite definite that she would prefer living with her father. She was able to verbalise her wishes very clearly and she was also able to motivate her choice in a mature manner. She argued that she felt life would be more peaceful with her father and she reported that her mother was often very aggressive and rude.	21	54	7
7. Continuity	Concern for the amount of psychological and physical upheaval the child may experience	<ul style="list-style-type: none"> • Caregiver's capacity to provide child with access to stable community involvement • Caregiver's capacity to provide access to other children of same age • Caregiver's access to support from family and friends • Caregiver's capacity to provide a 'family' environment 	If Mr X were living in [town A] and the children were able to attend their normal schools and remain part of their known social environment, the disruption would be much less and the children would have much less difficulty adjusting to a new situation with him.	24	62	5

Theme	Operational definition	Criteria	Example (case material taken from reports)	Results of Thematic Content Analysis		
				No. Reports (n=39)	% reports (n=39)	Overall rank order
		<ul style="list-style-type: none"> Caregiver's willingness to provide contact with extended family Caregiver's capacity to maintain child's daily routine Caregiver's capacity to maintain and encourage child's interests and activities Caregiver's religious, cultural and linguistic orientation in relation to the child Degree of disruption to the child's physical, social and emotional environments 				
8. Caregiver's history and functioning	Factors relating to caregiver's past and present history that might affect current caregiving	<ul style="list-style-type: none"> Caregiver's childhood history of sexual abuse Caregiver's childhood history of physical abuse Caregiver's history of alcohol/drug abuse Caregiver's psychiatric history Caregiver's sexual orientation Caregiver's capacity to contribute to child's moral development Caregiver's current alcohol/drug abuse Caregiver's psychological adjustment Extent to which each caregiver is responsible for marriage breaking down 	<p>I am therefore not in any doubt regarding the presence of the abuse and dependence of substances, both slimming products and alcohol. What is of concern in terms of the interests of the child is her [the mother's] consequently irrational behaviour ... that she ignores the child and sometimes falls into a sleep so deep that she does not wake for the child."</p> <p>The central issue in this case would appear to be Ms X's emotional state and functioning ... What has been described currently as her 'depression' can largely be attributed to her difficulties negotiating the stress and conflict surrounding the dissolution of the marriage and the custody dispute. I do not believe that Ms X's current psychological functioning makes her an unfit mother in any substantive manner.</p>	28	72	4
9. Caregiving skills	The caregiver's ability to provide a supportive emotional environment for the child	<ul style="list-style-type: none"> Caregiver's caregiving style, including discipline practices and beliefs Caregiver's capacity to understand the child's needs and separate them from his/her own needs Caregiver's understanding of child development Caregiver pressure on the child to 'choose' one caregiver 	<p>It is clear to me that there are distinct differences in the child-rearing patterns of the parents. The father is insistent on regular routine, proper nutrition and firm limit-setting, as well as encouraging independence in self-care. The mother is more easy-going, more concerned with the fact that the child should have fun and she does not encourage the same degree of routine.</p> <p>The respondent possesses a particular sensitivity for the</p>	30	77	3

Theme	Operational definition	Criteria	Example (case material taken from reports)	Results of Thematic Content Analysis		
				No. Reports (n=39)	% reports (n=39)	Overall rank order
			children's feelings, has an excellent understanding of their needs, and both possesses and exercises the capacity to behave and respond accordingly.			
10. Socio-economic resources	The caregiver's capacity to provide basic resources	<ul style="list-style-type: none"> Caregiver's financial sufficiency Caregiver's capacity to provide a safe physical environment for child Caregiver's capacity to provide access to appropriate education Caregiver's capacity to accommodate child's health needs 	<p>At present, Mr X, due to financial circumstances, is committed to two positions and therefore cannot be a parent who is readily available to serve the needs of the children</p> <p>What concerned me more was that it [the apartment] was not in a safe and secure area . . . I was even more concerned about this issue when . . . [the father] informed me that [the girls] returned home in the afternoons by public transport.</p>	7	18	10

Quality of caregiver–child relationship

The second most commonly employed criterion, which was reflected in 33 (85%) reports, was the quality of caregiver–child relationship. This theme incorporates several features that define the nature of the bi-directional relationship between the child and his or her caregiver, an example of which is provided in Table 1.

Caregiving skills

The criterion ranked third, caregiving skills, was reflected in 30 (77%) reports. This referred to the caregiver's ability to provide a supportive emotional environment. An important instance of this support in the context of divorce would be the caregiver's capacity to understand the child's needs and to separate them from his or her own. This capacity is frequently challenged when the caregiver must, for example, resist speaking badly of the other caregiver in front of the child or keeping the child from seeing the other caregiver. Two examples are provided in which the psychologists have considered the caregivers' individual disciplinary practices and their understanding of the child's needs and developmental processes respectively.

Caregiver history and functioning

A consideration of the caregiver's history and functioning was reflected in 28 (72%) reports. This theme covers several issues reflected in the criteria listed (Table 1), one of which is the caregiver's history of substance abuse, and his or her psychiatric history and (current) psychological adjustment. The two examples provided serve to demonstrate the two poles of the caregiver's psychological adjustment that might be considered, namely, a chronic history of substance abuse or dependence and a broad rather than psychiatric assessment of functioning in which the issues raised are clearly related to caregiving capacity.

Caregiver involvement and continuity

Two criteria were ranked fifth, namely, caregiver involvement and continuity, and were reflected in 24 (62%) reports. With regard to caregiver involvement, the example considers the caregiver's actual exercise of responsibility and thus her or his involvement in the child's activities. This criterion would assist the psychologist and ultimately the court in determining who is the child's primary caregiver. Continuity, as theme, concerns the amount of psychological, emotional and physical upheaval or disruption the child may experience during the divorce process as a whole. The example provided incorporates a relatively broad assessment of the degree of continuity in the children's lives post-separation and divorce.

Child's rights and wishes

As already suggested in the earlier discussion, a further theme defined and explored separately for its potential interest value is the child's wishes. This theme was evident in 21 (54%) reports and, in the example selected, the psychologist discusses the child's expression of her wishes. It is important to note that this expression is considered in relation to the child's particular developmental stage – from early to middle childhood and into late adolescence – and is thus related to the child's perceived capacity to express and motivate a sustainable preference with regard to custody and access.

Sharing caregiving, quality of parent's caregiving or marital relationship, and socio-economic resources

Three remaining criteria, namely, sharing caregiving, the quality of the parents' caregiving or marital relationship, and socio-economic resources were reflected in less than 50% of the reports. Sharing caregiving was present in 15 (39%) reports and concerns the caregivers' history of, and attitude towards, sharing caregiving responsibilities. The criterion illustrated in the chosen example is the parent's preferences for shared caregiving in the future. It should be noted that the coding of the above passage is contingent not on the use of the term, *joint custody*, but on the psychologist's consideration of the parents' related capacity for co-operation, sharing and equality in their caregiving responsibilities.

The quality of caregivers' caregiving or marital relationship was considered in 11 (31%) reports. As the examples provided indicate, this theme encompasses a consideration of the level of conflict within the caregiving or marital subsystem, both the more general degree of conflict and the specific instance of physical violence.

The least important criterion, which was considered in 7 (18%) reports, was the caregivers' socio-economic resources. This theme incorporates the caregivers' capacity to provide various basic resources for their children, in particular, a safe physical environment, access to appropriate education and to accommodate his or her particular health needs. Examples are provided to illustrate two different kinds

of consideration of socio-economic resources, namely, the caregiver's financial sufficiency in relation to the child's needs and the nature of the child's physical environment.

DISCUSSION

As mentioned previously, the key objective of the study was to examine the empirical basis for psychologists' decisions regarding children's best interests through an analysis of their written reports. Consequently, this discussion will evaluate the extent to which the criteria employed in the reports are reflective of the current empirical findings in the psychological literature. Further, some comments will be made regarding the broader legal and judicial context within which these findings must be located.

While the size of the sample of reports may not allow for fine distinctions to be made between individual themes or criteria, three broad groups of themes can be identified as having varying levels of importance in psychologists' decision-making. From the analysis of the psychologists' reports it is evident that the needs of the child were the predominant concerns driving the evaluation process. Appropriate consideration of the relevant children's emotional, relational, academic and health needs was therefore evident in the reports. This included the need to be with their psychological parent; a need highlighted in Goldstein, Freud and Solnit's (1973) seminal work.

This child-centred approach is consistent with empirical findings that the child's needs and interests should be of central importance in psychologists' custody evaluations. Representative of the broader literature, Jameson et al.'s (1997) assessment scheme rated the child's basic and developmentally related needs as the primary area of concern in determining what is in the best interests of the child. Further, it is noteworthy that Cumes and Lambiase, in their 1987 study of South African child custody practices, found that mental health professionals tend to be most cognisant of the child's needs and feelings, particularly when compared to legal professionals. Psychologists and mental health professionals, perhaps facilitated by their professional context, tend to inhabit the world of the child rather than the 'world of litigating adults' inhabited by their legal colleagues in custody matters (Cumes & Lambiase, 1987, p. 129).

The rating of the quality of the caregiver-child relationship and caregiving skills as the second- and third- highest-ranked themes, respectively, further reflects psychologists' predominantly child-centred approach. These two issues or themes relate to the extent to which caregivers possess the requisite capacity to provide adequately for the child's needs. However, their importance is also grounded empirically in the findings that children's relationship with their caregiver serves as a significant buffer against divorce as well as a range of other potential stressors (Wallerstein & Kelly, 1980). The earliest psychological literature of relevance to the question of the child's best interests focuses on the child's relationships with significant attachment figures or caregivers, finding for their importance in promoting children's development across

several domains (Ainsworth, 1973; Bowlby, 1952). In addition, all of the models of custody determination reviewed highlighted the role of evaluating the quality of the child's caregiving relationships (Ackerman & Ackerman, 1997; Bezuidenhout, 2000; Jameson, Ehrenberg & Hunter, 1997; Keilin & Bloom, 1986; Mudie, 1987; Stahl, 1994).

In contrast to the themes outlined above that received greatest prominence, sharing caregiving, the quality of caregivers' caregiving or marital relationship, and caregivers' socio-economic resources were ranked as least important. The fact that socio-economic resources constituted the lowest-ranked criterion in a sample of psychologists' reports was perhaps a predictable outcome, since financial and material factors are more typically considered the domain of social workers (Burman & Derman, 2002). However, for related reasons, psychologists may only consider caregivers' capacity to provide for children's basic resources in the event that this constitutes a notable difference between what each parent or caregiver can offer the child. For example, in one of the reports analysed it was clear that the father, in contrast to the mother, was living in an environment that posed a potential threat to his daughter's physical safety. While this was not an overriding factor in determining the outcome of the custody dispute, the psychologist judged it to merit serious consideration. This focus is consistent with Mudie's (1987) finding that stable socio-economic status mitigates against poor adjustment in children and thus should be considered in order to ensure the post-divorce adjustment of the children concerned.

A finding that similarly merits serious consideration is the fact that, along with socio-economic resources, sharing parenting and the quality of the caregiver's caregiving or marital relationship were ranked in the lowest band of themes or criteria. Once again, the particularities of the case must be taken into account. While in some cases the degree of acrimony and physical violence between the divorcing parties was clearly a salient issue, in others the quality of the relationship may have required little comment in relation to the referral question. An example of the former would be where the 'bad relationship' between the parents was reportedly 'repeated in the behaviour of the children who align themselves with the same-sex parent and interact in a destructive manner with each other' (Table 1). In a case such as this, it is readily apparent that the level of conflict between the parents would have a bearing on the question of the best interests of their children, and would impact on the parents' capacity to share parenting responsibilities and co-operate on parenting matters in the post-divorce situation.

However, despite alternative explanations, it remains noteworthy that only 39% of the reports considered the quality of the caregiving or marital relationship and sharing of caregiving, respectively. This finding is perhaps the clearest indication that psychologists' evaluations may be strongly influenced by factors other than empirical research. As indicated above, perhaps the most definitive finding in the psychological literature relevant to child custody evaluations is that the degree and duration of

conflict between parents or caregivers impact directly on children's adjustment (Hetherington, Bridges & Insabella, 1998; Sorensen & Goldman, 1990; Wallerstein & Kelly, 1980). Thus, children living in households in which there is an ongoing, high degree of conflict tend to be less well adjusted. Conversely, a stable, supportive caregiving or marital relationship can serve as a buffer or support to children.

While the nature of the referral question and other factors and constraints carry weight in framing the evaluation process, the scientific context that provides empirical support for psychological assumptions should similarly contribute to practice. Thus, the strength of this area of research suggests that it should generally take greater prominence in custody evaluations than found in the present study.

With regard to the relatively low ranking of shared caregiving, it bears mentioning that joint custody has not always been viewed as favourably as sole custody in South Africa. In 1987, for example, it was reported that 78% of recommendations in South Africa were in favour of sole custody determinations (with access to the other parent) (Mudie, 1987). However, a recent survey found that 78% of respondents considered joint custody a viable option in their custody evaluations (Swartz, Dawes, Africa, de Bruin & Brandt, in preparation).

While these findings might be used tentatively to suggest a shift in practice, and an increased openness to joint custody determinations, it is also possible that psychologists' perspectives, rather than judicial practice, have shifted. Thus, psychologists' awareness of the judicial audience for their reports and the preference for sole custody recommendations might influence their emphasis in reports away from the shared caregiving required of joint custodial arrangements. The ongoing need to co-operate on parenting matters is essential, rather than simply desirable, in joint custody. This is apparent in the fact that one of the few reports in which joint custody was recommended was one in which the parties demonstrated a particularly strong ability and willingness to co-operate on parenting matters. Evidence for this was the fact that they approached the relevant psychologist together prior to the divorce in order to seek advice on how to proceed with their divorce and custody arrangements in a manner that would best serve their children's interests.

While the argument that psychologists' lack of focus on shared caregiving may reflect their awareness of judicial preference must be tested empirically, a similar viewpoint has been reported elsewhere regarding lawyers' report writing. According to Burman and Derman (2002), private psychologists reported that the recommendations of their legal colleagues working in a Family Advocate's Office are strongly influenced by their opinion of what judges will accept.³ Three of the respondents in the present study commented spontaneously, and independently, on various ways in which they perceived their fellow psychologists as demonstrating an awareness of the interface between their reports and the legal or judicial context. For example, one respondent commented that psychologists might present more comprehensive custody reports if they do not wish to give testimony in court or if they view their

role as simply report writing, rather than as serving as a potential expert witness. The psychologist therefore demonstrated an awareness of the fact that custody work involves psychologists in psycholegal or forensic work in which their reports are received by a legal and judicial audience rather than remaining solely with their clients within a psychological realm.

The above-mentioned approach to report writing is one possible explanation for the lack of transparency evident in the reports. While not true of all reports, in many there was insufficient evidence of a clearly developed and sustained investigation driven by particular criteria or objectives that could be deduced by reading the report. Consequently, it was not always possible to determine the relationship between the psychologist's investigation and the conclusions and recommendations presented.

This may, as the respondent suggested, be related to psychologists' willingness or unwillingness to testify in court, and thus provide explanations not apparent by reading the report. However, it may also reflect psychologists' attempt to negotiate the tension between the different worlds that they inhabit – the psychological world and the legal or judicial one.⁴ As King and Trowell (1992) argue, the nature of the adversarial (legal) system of Anglo-Saxon countries is largely at odds with the longer-term problem-solving scenario relevant to children and their families. Lawyers' activities tend to be episodic in nature and framed within a paradigm that aims to find truths (King & Trowell, 1992). While not necessarily the case, this may result in heightened conflict and the promotion of one of the caregivers' or parents' interests rather than a continuous attempt to promote the welfare of children more typical of psychology. It is this difference between the two worlds that partly accounts for lawyers and judges discrediting psychologists' contributions as not displaying sufficient logic, relevance and reliability (Bonthuys, 2001; Hoffman & Pincus, 1989).

Similarly, most of the reports include only broad referral questions, if any at all. For example, reports might be headed 'Report on Mr and Mrs X and children, Y and Z' and prefaced with a statement that the report is submitted in accordance with instructions provided either by the Family Advocate or one of the divorcing parties' lawyers. Three of the respondents spoke of the importance of psychologists negotiating, formulating and clearly stating their referral question in order to clarify their role in the custody evaluation, as well as the purpose and function of their report. In this way, the interface between their work and the legal process would be clarified. One of the respondents referred to this task as part of an 'advocacy role' that he viewed as central to his involvement in custody work, and necessary in order to ensure that the children's interests were served.

In relation to this point, it bears mentioning that the diversity of referral questions in the present sample of reports may pose a threat to the study's validity. Just as the psychologists highlighted the importance of clarifying the referral question, a strong argument could be made that a particular referral question significantly shapes the assessment process. Accordingly, the referral question, over and above a range of other factors, may drive the criteria which psychologists consider in evaluating the child's

best interests. While it would have been ideal to have greater homogeneity in the sample, it is evident that the ranking of themes was largely consistent with Jameson et al.'s (1997) empirical model, despite this diversity of referral questions.

In the middle of the range of findings, continuity, caregiver involvement, and the child's rights and wishes were rated as of similar importance. With respect to continuity, it is significant to note that a stable psychological, emotional and physical environment has been argued to be central to children's adjustment (Ainsworth, 1973; Bowlby, 1952). Accordingly, there is strong empirical support for the fact that continuity should be an influential consideration in determining children's best interests in custody matters. However, due to the limited sample size, no particular conclusions can be drawn regarding its intermediate ranking in the present study.

In contrast, the relatively low ranking of children's rights and wishes merits further discussion. A consideration of children's wishes was found in 54% of the reports, giving it a ranking of seven, just above sharing caregiving, the quality of the caregiving or marital relationship, and socio-economic resources. Just as the ranking of previous themes has been considered in the light of the particularities of the cases, it must be said that the majority of cases involved younger, pre-adolescent children. Since the literature indicates that increased weight should be given to the preferences and wishes of older children (Ackerman & Ackerman, 1997; Jameson, Ehrenberg & Hunter, 1997; Keilin & Bloom, 1986), it may be appropriate that only half of the reports made reference to the children's wishes.

However, this finding also highlights an additional tension which psychologists must negotiate, namely the tension between a needs-driven psychological approach and a rights-driven one. Following South Africa's ratification of the United Nations' (UN) Convention on the Rights of the Child in 1995, a committee was set up to harmonise South African law, policy and practices with the provisions of the Convention (National Programme of Action Steering Committee, 1997). Consequently, psychologists, like their legal colleagues involved in custody work, are bound to take into account children's right to be consulted in matters that affect their lives. In the light of this, it might have been expected that more weight would be given to children's wishes. However, the implications of the UN Convention for psychologists' child custody practice and the criteria they employ must still be subjected to empirical consideration. The content of the best interests principle therefore remains unclear.

Nonetheless, from a needs perspective, it is clear that children's right to participate must be weighed against their competence to consent if their best interests are to be served (Melton, 1983a, 1983b). Legal practitioners have expressed concern that self-determination and autonomy may have detrimental effects on children. Similarly, from a developmental perspective, it bears mentioning that children may not experience themselves as having real choices in legal matters, despite their right to participate and make autonomous decisions. Instead, particularly in the context of typically acrimonious divorce proceedings, children may experience the opportunity to express their wishes and preferences as stressful.

While competence might be based on children's developmental level and ability to express a coherent view, the question is raised whether it is appropriate for children to be burdened with the responsibility of voicing their wishes amidst high parental conflict, even if they are deemed competent. Moreover, the difficulties inherent in determining a child's legitimate wishes was apparent in at least one of the cases in which a pre-adolescent boy alternately expressed a preference to live with his mother and father. In this case, the psychologists involved differed in their opinions of the weight to be given to the young boy's wishes and the decision finally had to be made by the judge.

CONCLUSIONS AND RECOMMENDATIONS

As stated earlier, it has been necessary to interpret the findings of the present study with caution, particularly due to the small sample size and the diversity of reports included. However, four key conclusions can be drawn from the findings and translated into broad guidelines for future research and practice.

Firstly, the importance of grounding psychologists' practice in empirical research has been emphasised. We have argued that several findings within the broader literature, as well as more specific research into criteria for custody decision-making, are relevant to the custody process. Further, several of these research findings or criteria were considered in varying proportions of the reports analysed. Most importantly, the reports advocated a child-focused approach that gives prominence to children's basic and development-related needs, as well as the quality of the caregiver-child relationship and the caregiver or parent's caregiving skills. In addition, the reports emphasised, amongst other factors, the importance of the quality of the caregiving or marital relationship due to the negative impact of ongoing, high degrees of conflict between caregivers on children's adjustment.

Secondly, the study has highlighted the fact that psychologists conduct custody evaluations within a legal and judicial context that has its own set of assumptions and practices. Moreover, this context has important implications for psychologists' practice and for the form taken by their reports. In particular, we have argued for the value of negotiating the referral question with the relevant lawyer or advocate and framing the report as an investigation of that question. Clearly written, transparent reports in which the link between the referral question, the assessment process, and the psychologist's conclusions and recommendations is readily apparent might enhance the usefulness of these reports for all professionals concerned. This is consistent with Louw and Allan's (1998) position that psychologists involved in psycholegal work must adjust to the demands of the context if they are to realise their potential as contributors to the process as a whole. They suggest that this involves psychologists adapting their paradigms, methods of assessment and report-writing style in order to produce legally relevant information. Psychologists and lawyers often speak different languages and a greater degree of coming together is needed if psychologists' reports

are to play an important and effective role in custody evaluations (see also Hoffman & Pincus, 1989).

Thirdly, the need to incorporate a child rights orientation into psychologists' custody practices was stressed. While South Africa's National Programme of Action has laid the foundation for this integration (National Programme of Action Steering Committee, 1997), further research should be conducted into the implications of a rights perspective for psychologists' work. A central component of this investigation should be the relationship between children's right to participate in matters which affect their well-being, and their need to be protected from the potential burden of responsibility posed by expressing their wishes and preferences amidst a conflictual situation. Competence to express a view cannot necessarily be equated with the need to do so simply because this is children's 'right'. Thus, mental health professionals must more fully articulate the implications of a child rights orientation for practices which may themselves impact on children and set them out clearly in guidelines for professional practice.

Finally, it has been noted that there are several key areas for further empirical research into child custody practices. However, if this research is to impact significantly on children's interests in custody matters, theory must be translated into guidelines for professional training and practice. We have already argued for the need to formulate the implications of a child rights orientation; to negotiate referral questions; and to adapt report writing styles to the legal-judicial context. This is consistent with Louw and Allan's (1998) position that guidelines for the practice of forensic psychology are greatly needed in order to equip psychologists to work in a specialisation field that exists between the law and psychology. However, we would argue that the present study also points to the importance of training within psychology. In particular, training and practice guidelines should incorporate a focus on the key issues informing psychologists' custody decision-making for which there is empirical support.

The template created by revising Jameson and colleagues' (1997) assessment model was shown to be useful in understanding psychologists' approach to custody evaluations. While no list of criteria is an adequate training tool in and of itself, it is argued that the revised grid may serve as a useful heuristic for professional training in custody work. A grid of this kind serves to highlight the important issues in custody evaluations for which there is empirical support, providing the basis for clinical practice that is adequately informed by empirical research. Moreover, the grid provides a useful tool for further research into mental health professionals' practices in South Africa. In this regard, a larger, more representative sample of custody reports could provide confirmation for the kinds of criteria employed by psychologists in the present study, the relationship this bears to empirical findings, and the gaps and needs for future training. The present study has attempted to provide a starting point for such future work.

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NOTES

- 1 In addition, three studies have examined the criteria employed by social workers in making custody recommendations (Africa, Dawes, Swartz & Brandt, 2003; Froneman, 2000; van der Merwe, 1990).
- 2 This conclusion is supported by the fact that approximately one-third of the 43 respondents in a nationwide study of forensic psychology had been involved in custody work for more than ten years (Louw & Allan, 1998). A different study with a response rate of approximately 50% included only 8 psychologists in their sample of persons who had conducted more than 11 custody evaluations (Bezuidenhout, 2000). Both studies therefore provide support for the contention that a relatively small number of psychologists in South Africa have substantial experience in conducting custody evaluations.
- 3 The Family Advocate's Office is a specialised state service that institutes enquiries into the welfare and interests of minor or dependent children in divorce matters in order to make recommendations to the court (McCurdie, 1994). The Office is staffed by state-appointed advocates (Family Advocates) and state-appointed social workers (Family Counsellors).
- 4 See Bonthuys (2001) and Durrbaum (2002) for a fuller discussion of the relationship between the psychological and legal or judicial context in custody work.

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